



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

May 31, 2017

BY ECF

The Honorable Vernon S. Broderick
United States District Judge
Thurgood Marshall United States Courthouse, Room 415
40 Foley Square
New York, New York 10007

**Re: *United States v. Ng Lap Seng,*
 S5 15 Cr. 706 (VSB)**

Dear Judge Broderick:

The Government respectfully submits this letter in the above-captioned matter in response to the defendant's letter of yesterday (Docket Entry No. 511 ("Def. Ltr.)) concerning the Government's request for the Court to exclude time in the interest of justice under the Speedy Trial Act between May 30, 2017 and the new trial date.

For the reasons previously set forth by the Government, it is entirely appropriate for the Court to exclude time in the interest of justice pursuant to 18 U.S.C. § 3161(h)(7)(A). We write simply to note that, regardless of any exclusion under Section 3161(h)(7)(A), the Speedy Trial clock has already been tolled under Section 3161(h)(1)(D) as a result of the parties' motions *in limine* that remain pending. "[T]he filing of a pretrial motion falls within [Section 3161(h)(1)(D)] irrespective of whether it actually causes, or is expected to cause, delay in starting a trial." *United States v. Tinklenberg*, 563 U.S. 647, 650 (2011). The exclusion of time lasts from the day the motion is filed until it is taken under advisement by the Court, and pursuant to Section 3161(h)(1)(H), time remains excluded for the first thirty days that such motion is under advisement. *See United States v. Bert*, 814 F.3d 70, 78 (2d Cir. 2016); *see also, e.g., Williams v. United States*, 123 F. Supp. 2d 100, 106 (E.D.N.Y. 2000) (motion *in limine* resulted in automatic exclusion of time under the Speedy Trial Act); *United States v. Bloate*, 655 F.3d 750, 753 (8th Cir. 2011) ("The time while a motion *in limine* is pending is excludable under the Speedy Trial Act."); *United States v. Jernigan*, 341 F.3d 1273, 1286 (11th Cir. 2003) (Speedy Trial clock was tolled from filing of defendant's motion *in limine* until trial, when district court was able to hear evidence necessary to rule on motion); *United States v. Sposito*, 106 F.3d 1042, 1044 (1st Cir. 1997) ("[M]otions *in limine* are 'pretrial motions' for the purposes of section 3161(h)(1)(D), implying that the filing of such a motion tolls the [Speedy Trial] clock.").

Honorable Vernon S. Broderick
United States District Judge
May 31, 2017
Page 2

Respectfully submitted,

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